

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

J U D G M E N T

BHUPAT SINGH
& OTHERS.

V. THE STATE OF RAJASTHAN

D. B. CRIMINAL APPEAL NO. 603/2001

Under Section 374 (2), Cr.P.C., against the Judgment dated 30-08-2001, passed by Shri Gulam Hussain, RHJS, the learned Special Judge, SC/ST Cases - cum - Sessions Judge, Balotra, in Sessions Case (SC/ST) No.2/99.

DATE OF JUDGMENT

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11-09-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Dharendra Singh, for Appellants.
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. S.S.Dhillon, for Complainant.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Appellants have preferred this appeal against the judgment dated 30-08-2001, passed by the Special Judge,

SC/ST (Prevention of Atrocities) Cases (District & Sessions Judge), Balotra, in Sessions Case (SC/ST) No.2/99.

The facts giving rise to the present matter are that Complainant – Luna Ram lodged an FIR in Police Station, Bakhasar at about 8.30 a.m. On 31-08-1998. Complainant reported that almost two months back he, Sugala, Tila and Lila went to Dhanera, Gujarat, for a job. On 30.08.1998, they came to Sanchoe in a Jeep and, thereafter, by another Jeep, they went to village Madhav. At around 7.15 P.M., they boarded a Bus from village Madhav and reached to Sata at around 9.30 P.M. From Sata, accused Bhupat Singh, Amrit @ Amiya, Ganu Singh @ Ganpat Singh, Pratap Singh and Kamiya boarded the Bus. After just leaving village Sata, Bhupat Singh, Rai Singh, Pratap Singh and Ganu Singh came near to their seat, as they all the four were sitting on the last seat of the Bus. Rai Singh stated that they will kill all the four. Bhupat Singh caught Lila by holding his neck and, thereafter, Rai Singh, Pratap Singh and Ganu Singh thrown Lila out of bus. Complainant suppressed himself out of fear. Thereafter, Sugala and Tila were also thrown out of bus as when he left the bus at village Bakhasar, Sugala and Tila were not found in the bus. The reason of fight by the accused was also stated alleging that almost 10 – 15 days back, buffaloes belonging to Pratap Singh and Ganu Singh damaged crop of Nagji and, at that time, when Ladha was taking those buffaloes,

then Rai Singh had beaten Ladha. The complainant further stated that he reached to his place at about 12 – 1 O'clock in night and stated all those facts to Nagji and following morning, it was found that Lila died, whereas Tila and Sugala received injuries.

On the basis of the report, FIR was lodged under Sections 302, 307 and 352, 323 read with Section 34 of IPC and Section 3 (2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Police, thereafter, conducted usual investigation and, thereafter, filed challan in the Court of Chief Judicial Magistrate, Barmer, from where, the matter was committed to the trial Court. Charges were framed against four accused under Sections 302, 307, 323 read with Section 34 of IPC and Section 3 (2) (5) of SC/ST (Prevention of Atrocities) Act. The charge was read over to the accused who denied the charge and claimed trial.

At the trial, 27 witnesses were produced and thirty-six documents were exhibited by the prosecution to prove their case, whereas, in defence, statement of one witness was recorded and eight documents were produced. Statements of the accused were recorded under Section 313 of Cr.P.C.

The learned trial Court convicted accused Bhupat Singh, Rai Singh and Amiya under Section 302/34 of IPC and Section 3 (2) (5) of SC/ST (Prevention of Atrocities) Act. They were sentenced to life imprisonment and fine of Rs.500/- each, in default of payment of fine, to further suffer one month's imprisonment. They were also convicted under Section 323, IPC, and sentenced to one month's imprisonment and a fine of Rs.50/- each, in default of payment of fine, to further suffer one week imprisonment. These accused were, however, acquitted from Section 307/34 of IPC. Accused Dashrath Giri @ Baba was acquitted completely.

Learned counsel, appearing for the appellants, urged that the appellants were falsely implicated in the matter and, thereby convicted by the trial Court without their being convincing evidence against them. Learned counsel submitted that the statements of eye witnesses are not corroborated by the medical evidence, yet the trial Court relied such contradictory piece of evidence to convict accused. It was urged that though prosecution story of throwing Sugala and Tila out of the Bus was not accepted by the trial Court, based on the statements of witnesses PW 9 Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram, but prosecution case in regard to deceased Lila was found proved on the basis of statements of those witnesses itself,

whose statements were found to be doubtful in regard to Sugala and Tila. It was thus, urged that the judgment of the learned trial Court be set aside and appellants be acquitted from the charge.

Per contra, learned Public Prosecutor supported the judgment of the trial Court and the learned counsel appearing for the complainant vehemently argued the case to support the judgment of the trial Court. The learned counsel Shri S.S.Dhillon urged that the prosecution proved its case by producing relevant evidence. In this regard, the statements of witnesses PW 9 Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram were referred along with the statement of PW 1 Dama Ram. It was argued that the accused are influential persons in the area and there is a terror of those accused, therefore, even many of the witnesses have turned hostile. It was submitted that the accused had thrown Lila Ram out of bus who then sustained severe injuries on his head, causing death. PW 7 Jiwa Ram was given complete story by the injured immediately after the occurrence and in the statement, PW 7 Jiwa Ram supported prosecution case. Hence, it cannot be said that accused were falsely implicated in the matter or there is no evidence to prove prosecution case. It was submitted that even the statements of PW 9 Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram are

sufficient to prove prosecution case, therefore, learned counsel Shri Dhillon prayed that there is no ground to accept the appeal rather the judgment of the trial Court deserves to be affirmed.

We have carefully considered the rival submissions of the parties and scanned the matter carefully.

The prosecution produced twenty-seven witnesses to prove their case and exhibited thirty-six documents. PW 1 Daya Ram who was the Bus Conductor, PW 2 Sawai Singh was the Bus Driver, who were produced in evidence along with PW 3 Hukma Ram – Bus Khalasi. However, all the three witnesses did not support the prosecution case and were declared hostile. PW 4 Khema Ram, PW 5 Shanker and PW 6 Gumna Ram again not supported prosecution and were declared hostile. Same was the position regarding PW 7 Jiwa Ram who had also not supported prosecution case. PW 7 Jiwa Ram stated that one injured came and said that while they were coming in bus, fell down. PW 12 Bhikha Ram had not supported the prosecution case and was turned hostile.

The learned trial Court mainly relied on the statements of PW 9 Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram, being the eye witnesses. PW 9 Luna Ram, in his statement, stated

that he along with Lila Ram, Tola Ram and Sugala Ram came to Sanchore and, thereafter, to village Gandhav in a Jeep and, thereafter, boarded a bus going to village Bakhasar. They reached to village Sata at around 9 p.m., where Bhupat Singh, Pratap Singh, Ganpat Singh and Amiya boarded the bus. Thereafter, Bhupat Singh came close to Lila and cath-hold of his neck. Pratap Singh and Ganpat Singh hold the body of Lila and, thereafter, Amiya pushed Lila out of the bus. The witness further stated that deceased Lila was first strangulated and, thereafter, thrown out. He, thereafter, suppressed himself under the seat out of fear. He had not seen Tila and Sugala thereafter. He left the bus at village Bakhasar along with "Kohlis", whose names are not known to him. He, thereafter, suppressed himself in a Babul tree out of fear and, thereafter, reached to his home at around 12 to 1 O'clock in the night. He had stated complete incidence to Nagji. In the morning, he first visited the site and, thereafter, visited police station to make a report. In the cross-examination, witness admitted that police station exists close to Bakhasar bus stand, where he left the bus, and he had not stated this incident to driver as well as conductor out of fear and before he reached to site, Police jeep was already existing. Witness has shown his ignorance as to who informed the police and how police arrived at the site. Witness further admitted that Police prepared its report on the site, after inquiring the facts

from him. The said statement of witness was in contradiction to his earlier statement, where it was stated that police registered report in the police station when the witness visited police station for submission of report.

PW 10 Tila Ram stated that he along with Sugala and Lila came to Sanchore from where they went to Gandhav, where they boarded a bus. Accused Rai Singh had also boarded bus along with them. At around 9.30 p.m., when bus reached to village Sata, then Bhupat Singh, Pratap Singh, Amiya and Ganpat Singh had also boarded the bus. Rai Singh thereafter stated that he has to finish Meghwals today and, thereafter, Bhupat Singh caught the neck of deceased Lila and strangulated him. Pratap Singh and Ganpat Singh thereafter, hold the body of Lila and thereafter Ram Singh opened the window of the bus and , thereafter, Amiya and Rai Singh pushed the body out of bus. The witness stated that it was Bhupat Singh who strangulated Lila and, thereafter, Lila was thrown out. Witness thereafter lost his consciousness and was thrown out of bus, and he received his consciousness, after one-and-a-half hours. The witness thereafter went to Jatun-ki-Dhani, where he requested Jats to give him water, but he was refused water by Jats, stating that he is drunk. Thereafter, on visit of site, Sugala was found unconscious, whereas Lila was found dead. In cross-examination, witness stated that Police visited site along with

the tractor and thereupon police inquired about the incident to him as well as Sugala. He informed the Police that they were beaten and thrown out of the bus by the accused, Police prepared a report, but they were not taken by the police along with them. Even witness and Sugala were not taken to the hospital by the Police. In fact, they were taken to hospital by Jats. Witness admitted that Bhupat Singh and Ram Singh are not known to him and accused had not fought with driver and conductor.

PW 11 Sugala Ram stated almost the same fact as was stated by witness PW 10 Tila Ram.

PW 19 Dr.Suresh Ohari stated that he had conducted post mortem of deceased Lila vide is Ex.P-28. The deceased Lila received one lacerated wound in occipital regions and one lacerated wound on forehead, apart from multiple abrasions on the face both side. In the opinion of Board members, the cause of death was injury leading to shock. The said witness in his cross-examination admitted that there is no sign of strangulation of deceased Lila Ram. Further, the said witness had not confirmed that injuries sustained by deceased Lila can be on account of falling out of bus. Dr. Jagdish Sharda (P.W.17) prepared injury reports of Tila Ram and Sugala Ram vide Exs.P-18 and P-34 respectively. In cross-examination, said witness stated that injuries received by Sugala Ram and Tila Ram can be

sustained on falling down from the bus, but if any one is thrown out of bus, then, one tries to struggle and, in those circumstances, the injuries sustained by the injured does not confirm that it can be sustained by throwing them out of bus.

The trial Court first considered the case of Sugala Ram and Tila Ram as to whether they were thrown out of bus or not ? Referring to the statements of PW 9 Luna Ram and PW 16 Dr. R.K. Chatruvedi, it was held that those two were not thrown out of bus. Thus, the trial Court had not accepted the prosecution case in regard two injured Tilaram and Sugala Ram. However, referring to the statements of PW 9 Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram, the prosecution case was accepted in regard to murder of Lila Ram, though while considering matter of deceased Lila Ram, the trial Court first recorded its conclusion that prosecution could not prove any motive of accused for commission of offence under Section 302 of IPC.

The trial Court found that the statements of Luna Ram, Tila Ram and Sugala Ram are relevant to prove that accused had thrown Lila Ram out of bus which ultimately resulted in death of Lila Ram.

We have considered the matter in the light of evidence available on record and find that even if the statements of PW 9

Luna Ram, PW 10 Tila Ram and PW 11 Sugala Ram are also taken into consideration, then also, the prosecution case is not proved. Those witnesses stated that Lila Ram was first strangled by Bhupat Singh who died and, thereafter, thrown out of bus. However, this version of witnesses is not corroborated by the medical evidence. The fact of strangulation is not stated, even in the first information report. Thus, the testimony of these witnesses becomes doubtful, more so, statements of Tila Ram and Sugala Ram were not found true by the trial Court which were used by the prosecution to prove story of throwing even Tila Ram and Sugala Ram out of bus by accused, even the statements of PW 16 Dr. R.K.Chaturvedi, PW 17 Dr. Jagdish Sharda were taken into consideration, where they had not supported prosecution case in regard to injured Tila and Sugala, thus it becomes clear that prosecution came with the false story to prove case against the accused. In the statement of Dr.R.K.Chaturvedi and Dr. Jagdish Sharda they admitted that the injuries sustained by the injured Tila Ram and Sugala Ram cannot be sustained by throwing a person out of bus. In a case where first Lila said to have been thrown by the accused, then it becomes obvious that other persons like Tila Ram and Sugala Ram would become alert if same incident is reported and try to struggle to save their lives. However, in medical evidence, no sign by Tila and Sugala of struggle was found.

Even if the statement of PW 9 Luna Ram is considered, then we find that there exists contradiction in his statement and was not even corroborated by two other eye witnesses PW 10 Tila Ram and PW 11 Sugala Ram. PW 9 Luna Ram first stated that after seeing the occurrence, he went to his residence out of fear and it is only next morning that he went to police station to make report, where the report was written and registered. However, in the cross-examination, he had admitted that when he first reached to the site, the Police was found existing who then inquired about the incident from him and the report was prepared there. Therefore, said witness has come out with two stories in his own statement and, now considering the statements of PW 10 Tila Ram and PW 11 Sugala Ram, it has come out that the Police inquired about the incident from them at the site and the report was prepared on the spot. Thus, the statements of witnesses does not corroborate, rather shows contradiction, yet the learned trial Court not only ignored those contradictions, but relied the same to draw its conclusion regarding guilt of the accused.

It is also unnatural for any injured not to report the matter to the Police immediately. It is only when Police visited site, where Lila Ram's body was found, that entire prosecution story came, otherwise an incident took place in the night was not reported, till the visit of Police in the morning and a fact cannot

be ignored that when witness Tila Ram went to Jatun-ki-Dhani, then on demand, water was not given to him, as he was stated to be drunk. It cannot be ruled out that if a person is over-drunk, then, while leaving bus, he can fall down out of the bus. In any case, we find that the learned trial Court has wrongly relied the testimony of the eye witnesses, despite of contradictions in the statements, apart from the fact that the statements are not corroborated by the medical evidence. Even the statements of eye witnesses are not corroborating each other except the story of strangulation of Lila Ram and throwing him out of bus by the accused, but prosecution case regarding strangulation of Lila Ram is not supported by medical evidence. In view of these facts, it is difficult to accept the finding of the trial Court, more so, when the trial Court itself held that part story stated by the eye witnesses PW 10 Gila Ram and PW 11 Sugala Ram, cannot be accepted regarding the fact of throwing them out of Bus. Thus, in other words, it can be said to be a false statement. The trial Court also recorded its finding that prosecution could not prove any motive against accused to cause harm to the deceased and injured. Thou, we are cautious of the fact that motive is not always necessary to record a finding of guilt against accused, but, in the present case, even prosecution could not prove their case against accused, rather it has come that the medical evidence does not corroborate statement of eye witness,

thus statements of witnesses cannot be relied in contradiction to medical evidence as medical evidence is based on experts opinion.

In view of the discussions made above, we cannot accept the finding of the learned trial Court, as such judgment of the trial Court deserves to be set aside. Accordingly, we allow the appeal, set aside the judgment of the trial Court and thereby conviction and sentence of the accused are also set aside. Since all the accused were released on bail by this Court, they need not to surrender. Their bail bonds are ordered to be discharged.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.